

Policy



STRATEGIC

COMPLIANCE

Head of Power

Local Government Act 2009

Key Supporting Council Document

Lockyer Valley Regional Council Corporate Plan (2022-2027):

- Provide regulatory services for the safety of the community

Definitions

Term	Definition
<i>Authorised Person</i>	A person who is authorised under an Act, Regulation or Local Law to exercise appropriate powers under an Act, Regulation or Local Law.
<i>Compliance Action</i>	A range of actions taken by Council to ensure that a person complies with their statutory obligations. Compliance Action includes Cooperative Compliance Action and Formal Compliance Action.
<i>Cooperative Compliance Action</i>	Actions to resolve a matter of non-compliance through mediation and/or negotiation (i.e. discussions, education, agreements) without issuing notices, penalty infringement notices or commencing prosecution.
<i>Council</i>	The Lockyer Valley Regional Council (LVRC). This includes Authorised Persons and Officers of Council.
<i>Formal Compliance Action</i>	Undertaking actions through the issuing of notices (e.g. show cause notice, enforcement notice, compliance notice, orders, penalty infringement notices) or commencing prosecution to resolve a matter of non-compliance. Formal Compliance Action is undertaken in accordance with the relevant legislative requirements, if required.
<i>Non-compliance</i>	Failure or refusal to comply, as with a statutory obligation (e.g. law, regulation), whether intentional or not.
<i>Penalty Infringement Notices (PIN)</i>	An infringement notice issued under the <i>State Penalties Enforcement Act 1999</i> for an offence mentioned in Schedule 1 of the Act, and requiring the payment of a fine as determined by the number of penalty units mentioned in Schedule 1 of the Act.
<i>Person</i>	A person is a human being, but in legal terms it can also refer to: <ul style="list-style-type: none">• Firms• Labour organizations• Partnerships• Associations• Corporations

A legal person is a human or non-human entity that is treated as a person for limited legal purposes. Legal persons can sue and be sued, own property, and enter into contracts.

Policy Objective

The Compliance Policy provides a rationale and framework for an equitable, transparent and consistent approach to Compliance Actions undertaken by Lockyer Valley Regional Council (“Council”).

The Compliance Policy will be implemented by Authorised Persons when undertaking Compliance Action on behalf of Council.

The Compliance Policy also provides clarity and certainty for the community in what to expect of Compliance Action.

Policy Statement

Council has obligations under a range of State legislations to ensure certain public health, safety, building, plumbing and land use standards are met, and the environment is protected.

These obligations are articulated in a range of Acts as well as Council statutory instruments including Local Laws and Planning Schemes. The State Government also has obligations with regard to environmental protection and health and safety standards, some of which are devolved to Local Government to undertake Compliance Action on their behalf.

This policy has been developed to assist Council officers, including Authorised Persons, involved in Compliance Action and to advise community members of the approach that will generally be taken.

Key Principles

All Compliance Action undertaken by Council will:

- be outcome focussed;
- in the first instance and where appropriate, be Cooperative Compliance Action, i.e. seeking a cooperative approach to achieving an outcome to rectify non-compliance; and
- include Formal Compliance Action (e.g. giving of show cause and enforcement notices, giving of Penalty Infringement Notices (PINs), commencing prosecution) where necessary in the first instance or where Cooperative Compliance Action is unsuccessful.

Compliance Priorities

Compliance Action can be classified as either proactive or reactive.

Proactive Compliance Action: usually targeted and a consequence of preventative project initiatives, programmed inspections, or scheduled audits.

Reactive Compliance Action: usually a consequence of a complaint raised by a member of the community, a Councillor on behalf of a member of the community, a government department or through officer observation.

Due to resource limitations, Compliance Action will generally be undertaken by Council reactively in response to complaints. However, matters of non-compliance where there is a risk to public health and safety or a risk of serious environmental harm will be prioritised regardless of whether or not that matter is the subject of a complaint.

The Compliance Action Process

The Compliance Action process will be applied consistently, without regard to the source of complaint, to determine the most appropriate approach, priority and type of Compliance Action to be taken.

All Compliance Action (e.g. issuing of letters, giving of show cause and enforcement notices, giving of Penalty Infringement Notices (PINs), commencing prosecution) initiated by Council will take the key principles into consideration.

When undertaking Compliance Action, and where appropriate, Council will in the first instance undertake Cooperative Compliance Action including mediation and negotiation to rectify the non-compliance. Council will follow up and monitor the outcome of all Compliance Action.

Compliance Action, where appropriate, will generally progress through the following steps:

- inform and raise awareness;
- verbally direct action be taken to remedy non-compliance;
- provide written correspondence outlining the non-compliance, what action is to be taken to remedy the non-compliance, and the timeframe in which action is to be taken;
- the issuing of a Penalty Infringement Notice (PIN);
- the issuing of a show cause notice and, if necessary, an enforcement notice; and
- commencement of prosecution.

PINs will not be issued, and prosecutions will generally not be initiated, unless:

- all other means of achieving compliance have been exhausted;
- there is sufficient evidence available to achieve successful prosecution;
- the nature of the offence requires immediate infringements or prosecution; and
- legislation requires formal Compliance Action be initiated.

Council may immediately initiate formal Compliance Action (e.g. giving of show cause and enforcement notices, giving of a PIN, commencing prosecution) for high risk non-compliance issues. This includes, but is not limited to:

- immediate or likely life-threatening situations (i.e. non-compliant swimming pool fencing);
- economical risks associated with the non-compliance issue;
- permanent or irreversible damage to the natural or built environment;
- immediate risk to public health, safety or wellbeing; or
- persons where a pattern/repeated instances of behaviour and failure to adequately rectify the non-compliance has been established.

Should a person have a concern about Compliance Action taken by Council or the way an investigation has been managed, they may have their concerns investigated in a range of ways:

1. Council's Complaints Management Process;
2. requesting a review of a decision;
3. through the Queensland Ombudsman's Office;
4. making an application for Right to Information (RTI); and/or
5. through the Crime and Corruption Commission.

Human Rights

Council is committed to respecting, protecting and promoting human rights. Council has an obligation under the *Human Rights Act 2019* to give proper consideration to human rights when making a decision, and to act and make decisions in a way that is compatible with human rights. To the extent that an act or decision under this policy may engage human rights, Council will have regard to the *Human Rights Act 2019* in undertaking the act or making the decision.

Related Documents

Compliance Procedure